

<b>COMPLIANCE BOARD OPINION 93-10</b>
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October 15, 1993

*Mr. Clifford E. Snyder, Jr.*

The Open Meetings Compliance Board has considered your complaint dated August 5, 1993, in which you allege that the practice of the Board of County Commissioners of Frederick County in holding closed "Directors' meetings" violates the Open Meetings Act.

Your complaint states that the Board of County Commissioners holds such a "Directors' meeting" every Monday morning. The meeting is closed to the public and, you assert, the Act's prerequisites to the closing of a meeting, including a recorded vote, are not met. Further, you contend that the activities conducted at these meetings go beyond the confines of the "executive function" exclusion from the Act.

In a timely response on behalf of the Board of County Commissioners, County Attorney John S. Mathias acknowledges that the prerequisites to the closing of a meeting under the Open Meetings Act are not met for the Directors' meetings. Mr. Mathias asserts, however, that the Act is not applicable to these meetings for two reasons: First, the meetings in question are not those of a "public body"; and second, "[v]irtually everything discussed in the Directors' meetings constitutes [an] executive function."

The threshold issue for any question under the Open Meetings Act is whether the Act applies at all to the gathering in question. The Act applies only if a "public body" is holding a "meeting" on subject matter that is within the scope of the Act. *See generally Office of the Attorney General, Open Meetings Act Manual* 3-13 (1992). If the entity in question is not a "public body," the Act is inapplicable and there is no need to consider any other provision of the Act.

As a multi-member body created by the Maryland Constitution and State statute, the Board of County Commissioners for Frederick County is a "public body." §10-502(h)(1) of the State Government Article, Maryland Code. The County contends, however, that the group which assembles each Monday morning is the "local government's counterpart to the Governor's Cabinet [or] Executive Council ..." and is therefore excluded from the definition of "public body" by §10-502(h)(3)(viii). The Compliance Board agrees.

Frederick County is not a home rule jurisdiction. The Board of County Commissioners, accordingly, exercises not only certain legislative authority as granted by the General Assembly but also executive authority within the County. The Board is responsible for the activities of those elements of county government that, in a county with charter home rule, would be supervised by a county executive. If a county executive were to assemble a group of department heads on a regular basis, that group of officials would be the home rule county's "counterpart to the Governor's Cabinet [or] Executive Council ...."<sup>1</sup>

The result is no different in a county without home rule, where the executive head of county government—here, the Board of County Commissioners—meets regularly with department heads. According to Mr. Mathias:

The Commissioners have had a long-standing tradition of conducting a Directors' meeting each Monday morning at 9:00 a.m. In attendance at these meetings are the Commissioners and the heads of various departments (the "Directors"). Typically, the Commissioners will review the calendar for the coming week and also consider scheduling issues for the future. The Commissioners may ask questions of the Directors. The Directors also have an opportunity to update the Commissioners on recent developments in their departments and seek direction from the Commissioners.

The group of people in that room each Monday morning does not constitute "a public body," for it is the Frederick County "counterpart to the Governor's Cabinet." That is, the Directors' meeting is a forum for "coordination and effective direction and supervision" for the executive side of Frederick County's government—the equivalent, in the Frederick County government, to a similar forum convened regularly by the Governor or a county executive.<sup>2</sup> As the Attorney General correctly observed: "The Act does not apply ... to a meeting between the county commissioners in a county without home rule and the heads of departments of county government, because that group would be the 'local counterpart' to the Governor's Cabinet in that county." *Open Meetings Manual* at 6.

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<sup>1</sup> The "Executive Council" consists of the Governor, Lieutenant Governor, departmental secretaries, and a few other senior officials. §8-103 of the State Government Article, Maryland Code. The "Governor's Cabinet" is not defined by law but in practice is understood to mean the Executive Council and key members of the Governor's personal staff.

<sup>2</sup> The quoted phrase states the purposes of the Executive Council—§8-104 of the State Government Article.

Because the participants in the Directors' meeting do not constitute a "public body," the Act is inapplicable. Thus, we need not consider the County's contention that the Act is also inapplicable because the matters considered at the Directors' meetings fall within the exclusion for "executive functions."

In both your initial letter of complaint and a follow-up letter, you have commented that this construction of the "local counterpart" exclusion from the definition of "public body" would lead to potential abuse, by allowing meetings of the Board of County Commissioners to be "cloaked in secrecy by including Directors and calling them Directors' Meetings." We do not believe that this opinion has the potential for such abuse. The "local counterpart to the Governor's Cabinet" has a status as such only when it is truly a counterpart for executive branch policy guidance. The "counterpart" concept does not extend to actions of the Board of County Commissioners taken in a role other than that of executive branch decisionmaker.

In summary, the Open Meetings Compliance Board finds no violation of the Open Meetings Act in connection with the weekly Directors' meetings in which the Board of County Commissioners of Frederick County participates.

OPEN MEETINGS COMPLIANCE BOARD

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